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APPALACHIAN POWER CO. *v.* TOWN OF PULASKI.

Sept. 22, 1921.

[108 S. E. 885.]

**1. Electricity (§ 4\*)—Municipality and Lighting Company May Amend Franchise by Agreement without Additional Consideration.**—Municipal authorities and an electric lighting and power company may by agreement amend an ordinance conferring a franchise on the company and reduce the maximum rate thereby authorized, and no further consideration to the company would be needed other than the continuing privilege of conducting its business under the ordinance.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 55.]

**2. Electricity (§ 11\*)—Lighting Company Held Authorized to Reduce Rates without Consent of Municipality.**—Where an electric light and power company is operating under a franchise fixing a maximum rate, the company may, without the consent of the town, establish a schedule of reduced rates and make them effective.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 55.]

**3. Electricity (§ 4\*)—Burden upon Municipality to Show that Lighting Company's Franchise Had Been Amended.**—Where a town claimed that the franchise of an electric light and power company had been amended by resolution, so as to reduce rates, the burden of proof was upon the town.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 343.]

**4. Electricity (§ 4\*)—Lighting Company's Franchise Cannot Be Amended without Consent of Both Parties.**—Like other contracts, a franchise of an electric light and power company cannot be amended without the consent of both the municipality and the company.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 316.]

**5. Electricity (§ 4\*)—Lighting Company's Franchise Held Not Amended by Consent.**—Where an electric light and power company, operating under a franchise fixing a maximum rate, proposed to the municipality to reduce the rate, and the municipality by resolution agreed thereto, such acts did not constitute an amendment of the original ordinance, prohibiting an increase in rates, the company not having known of or consented to such amendment.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 318.]

**6. Electricity (§ 4\*)—Amendment of Franchise Held Not Ratified by Lighting Company.**—Where an electric light and power company operating under franchise proposed to the municipality to establish a schedule of reduced rates, and the municipality agreed thereto by resolution, held that by charging the rates so fixed the company did not thereby ratify or approve the claimed amendment of the franchise by

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the passage of the later resolution; the company having the right to reduce rates without the municipality's consent.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 55.]

Error to Circuit Court, Pulaski County.

Petition by the Town of Pulaski for a writ of mandamus against the Appalachian Power Company. Judgment for petitioner, and defendant brings error. Reversed and dismissed.

*H. C. Gilmer*, of Pulaski, for plaintiff in error.

*R. E. Scott*, of Richmond, for defendant in error.

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HOLSTON CORPORATION *v.* WISE COUNTY.

Sept. 22, 1921.

[109 S. E. 180.]

**1. Counties (§ 153½\*)—County Guaranty of Payment for Rock Furnished Contractors on Roads Not within Inhibition of Constitution, as Granting Aid and Credit.**—A county guaranty of payment for stone furnished contractors to be used in paving county roads is not within Const. § 185, providing that "the credit of the county shall not be granted."

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 683.]

**2. Highways (§ 109\*)—Contract for Stone by County Engineer Ratified by Board of Supervisors Held Binding on County.**—Since, under Acts 1910, c. 47, the county supervisors might have guaranteed payment for crushed stone furnished contractors for use on county roads, such a contract by the county engineer was binding on the county, where ratified by the supervisors, and where the benefits of the contract were accepted.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 667.]

**3. Highways (§ 109\*)—Contract between Quarry Company and Road Contractor Held Not to Release County from Guaranty of Stone Furnished Contractor.**—Where a quarry company contracts with a county to furnish crushed stone to contractors on the roads of the county, the county guaranteeing payment for the stone, the contract embraced all the stone which the quarry company might supply to any and all contractors, and an agreement between the quarry company and a contractor that in no way increased the liability of the county did not operate to release the county.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 665.]

**4. Guaranty (§ 46 (2)\*)—Notice to County that Quarry Company Claimed under Its Guaranty of Payment for Stone Furnished Bankrupt Contractor Held Sufficient.**—Where a county contracted with a

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.